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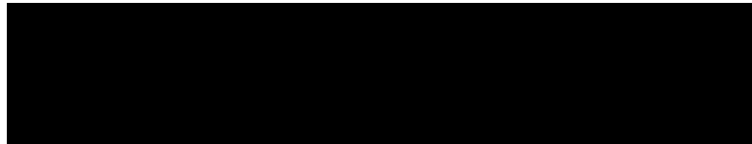
U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, NW
Washington, D.C. 20536



OCT 23 2003

FILE: SRC 02 072 52478 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:

Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

ON BEHALF OF PETITIONER:



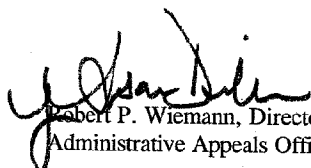
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter will be remanded to the director for further action.

The petitioner is a wholesale/retail auto sales company. It seeks to employ the beneficiary as a management trainee for a period of two years. The director determined that the petitioner had not established that it had an adequate physical plant to provide the proposed training.

On appeal, counsel submits a brief stating that the director erred in her decision because the petitioner does have a physical plant that would allow for the training.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii), provides classification for an alien having a residence in a foreign country, which he or she has no intention of abandoning, who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. § 214.2(h)(7) states, in pertinent part:

(ii) Evidence required for petition involving alien trainee--(A) Conditions. The petitioner is required to demonstrate that:

(1) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) Description of training program. Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit, which will accrue to the petitioner for providing the training.

(iii) Restrictions on training program for alien trainee. A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The director denied the petition based on the petitioner's response to the director's request for evidence. The director requested the petitioner to describe the physical plant and classroom facilities and submit photographs of the training facilities. The petitioner submitted a number of photographs of various office space, but no area that appeared to be designated as a training area. The petitioner stated, "The beneficiary will spend one-half of each day engaged in review and academic study in classroom type study at a desk at the petitioner's facility." In her decision, the director stated, "The photos submitted do not establish that there is an assigned training facility on site. The petitioner was asked to submit photos of the training facilities." On appeal, counsel states that some of the photographs submitted in response to the request for evidence were "pictures of the petitioner's assigned training facility as well as photographs of physical [sic] plant. . . . Although we believe the photographs previously submitted detail the assigned training facility we are including as Exhibit 1 several more photographs specifically and solely of the petitioner's assigned training facility." The director's request was unclear in that she asked for a description of both the training and classroom facilities, but only asked for photographs of the training facilities. The training facilities are not necessarily the same as the classroom facilities when training involves more than just academic instruction. The director's remarks on this issue are withdrawn.

Beyond the decision of the director, the regulations forbid approving a training program which "[d]eals in generalities with no fixed schedule, objectives, or means of evaluation." 8 C.F.R. § 214.2(h)(7)(iii)(A). The petitioner has not established that the training program does not deal in generalities. The proposed training program is presented in an outline format. It is broken down by topic and length of time designated to cover the topic (i.e., "Individual Computer Management Skills, 3 months;" "Inventory Management, 5 months," etc.) and each topic is then divided into several sub-topics. Some topic areas are more specific than others, but the timelines would need to be broken down into significantly more discrete segments, with more information about how the time would be utilized, to meet the

terms of the regulations. There is no structure provided as to how the information is going to be taught, nor is there any detail about what will transpire over the designated training time.

The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of the training and classroom facilities, as well as the details of the training program and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's August 28, 2002 decision is withdrawn. The matter is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.